

FCC MAIL SECTION

Before the  
Federal Communications Commission  
Washington, D.C. 20554

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MM Docket BY 93-213

DISPATCHED BY

In the Matter of

Amendment of Section 73.202(b), RM-7214  
Table of Allotments,  
FM Broadcast Stations.  
(Menomonie, Wisconsin)

## NOTICE OF PROPOSED RULE MAKING

Adopted: July 6, 1993;

Released: July 22, 1993

Comment Date: September 17, 1993

Reply Comment Date: October 4, 1993

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Jay Lellman ("petitioner"), requesting the allotment of Channel 285A to Menomonie, Wisconsin.<sup>1 2</sup> Petitioner, states he will apply for Channel 285A, if allotted.

2. We believe the public interest would be served by proposing the allotment of Channel 285A to Menomonie, Wisconsin, since it could provide the community with an additional FM service. Channel 285A can be allotted to Menomonie in compliance with the Commission's minimum distance separation requirements with a site restriction of 15.2 kilometers (9.4 miles) west in order to avoid a short-spacing with Station WAXX-FM, Channel 283C, Eau Clair, Wisconsin.<sup>3</sup>

<sup>1</sup> This petition for rule making was originally dismissed by letter on the grounds that the proposal did not comply with the Commission's Rules regarding city grade coverage. See *Letter from Assistant Chief, Policy and Rules Division, to Jay Lellman* (October 31, 1990). Petitioner filed an appeal of the letter dismissal and again requested the initiation of a rule making proceeding.

After petitioner filed its appeal, we determined that an alternate site was available that would comply with the principal city coverage requirements. Therefore, using the alternate site coordinates, we now believe it is appropriate to seek comment on petitioner's proposal to allot Channel 285A at Menomonie, Wisconsin. We issue this *Notice* and will dismiss petitioner's petition for reconsideration as moot at the termination of this proceeding. We will treat petitioner's petition for reconsideration as comments to this proceeding. We note that Phillips Broadcasting Company, Inc. ("Phillips"), licensee of Stations WMEQ(AM) and WMEQ-FM, Menomonie, Wisconsin, filed an opposition to the petition for reconsideration. We will consider the opposition in conjunction with the final resolution of this proceeding. Phillips will be served with a copy of this *Notice*.

<sup>2</sup> Although petitioner's request indicates that the original copy

3. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

	Channel No.	Present	Proposed
City			
Menomonie, <sup>4</sup>		221C3	221C3, 285A
Wisconsin			

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before September 17, 1993, and reply comments on or before October 4, 1993, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Larry G. Fuss  
Post Office Box 159  
Fayetteville, Georgia 30214  
(Consultant for petitioner)

6. Furthermore, IT IS ORDERED that the Secretary of the Commission SHALL SEND a copy of this *Notice* by Certified Mail, Receipt Requested, to Phillips Broadcasting Company, Inc., P.O. Box 880, Menomonie, Wisconsin 54751.

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table

of his proposal was signed by his consultant, he failed to include an affidavit verifying that the statements contained in his petition were accurate to the best of his knowledge. Section 1.52 of the Commission's Rules requires that the original of any document filed with the Commission by a party not represented by counsel be signed and verified by the party and his/her address stated. In the absence of such verification, the petition may be dismissed. Section 1.401(b) of the Commission's Rules concerning rule making proceedings places petitioners on notice that their proposal must conform with the requirements of Section 1.52 regarding subscription and verification. See also *Amendment of Section 1.420 and 73.3584 of the Commission's Rules Concerning Abuses of the Commission's Processes*, 5 FCC Rcd 3911, n.41 (1990). Petitioner is requested to rectify this omission in its comments.

<sup>3</sup> The coordinates for Channel 285A at Menomonie are North Latitude 44-56-28 and West Longitude 92-05-51.

<sup>4</sup> We note that the FM Table of Allotments erroneously misspelled the community of Menomonie. We will make the editorial change in the context of this proceeding. Since the correction is editorial in nature, a public notice and comment proceeding is unnecessary. See 5 USC 553(b)(A) and (B).

of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding, contact Pamela Blumenthal, Mass Media Bureau, (202)634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

#### FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger  
Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

#### APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cui-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in

reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.